Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by the Tenant to cancel a 1 Month Notice to End Tenancy for Cause (the "Notice") and for more time to make the Application.

An agent for the Landlord (the "Landlord) and the building manager appeared for the company Landlord named on the Application. The Tenant also appeared for the hearing with an advocate. All the parties, except for the Tenant's advocate, provided affirmed testimony during the hearing.

The Landlord confirmed receipt of the Tenant's Application which was served by registered mail pursuant to Section 89(1) (c) of the *Residential Tenancy Act* (the "Act"). The Tenant's advocate confirmed receipt of the Landlord's documentary and photographic evidence prior to the hearing. The Landlord confirmed receipt of the Tenant's documentary and photographic evidence but submitted that it had been served late by the Tenant.

The Tenant disputed that the evidence had been served late to the Landlord. However, I noted that it had also been submitted one day late by the Tenant to the Residential Tenancy Branch. After making a number of submissions with regards to the late evidence, the Landlord agreed that the hearing should not be stalled by this issue and the hearing continued with the consideration of the parties' evidence and with the parties consent.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party on the evidence provided. I have carefully considered the evidence provided by the parties in this case but I have only documented that evidence which I relied upon to make findings in this decision.

Preliminary Issues

The Tenant applied for more time to make the Application to cancel the Notice. Therefore, I turned my mind to this issue first. The Tenant testified that she made the Application on January 11, 2016, being one day after the ten day time limit provided by Section 47(4) of the Act. The Tenant confirmed that she had received the Notice on December 31, 2015 by personal service and therefore she would have been required to dispute the Notice by January 10, 2016.

The Tenant testified and provided a letter with her Application explaining that she was suffering from stress and panic attacks which made her afraid to leave the rental unit. In support of this the Tenant provided a medical note from her doctor which confirms the medical condition she described in her letter.

Section 66 of the Act allows an Arbitrator to extend a time limit imposed by the Act only in exceptional circumstances. In this case I accept the Tenant's evidence which is supported by medical evidence that she was unable to make the Application within the time limit imposed by the Act and grant the Tenant the extension to make the Application to dispute the Notice.

Issue(s) to be Decided

- Has the Tenant established that the Notice ought to be cancelled?
- Is the Landlord entitled to an Order of Possession?

Background and Evidence

Both parties agreed that this tenancy for the rental unit in an apartment building started on October 1, 2014 on a month to month basis. The parties signed a written tenancy agreement which requires the Tenant to pay rent in the amount of $745.00 on the first day of each month. The Tenant paid a security deposit of $365.00 at the start of the tenancy which the Landlord still retains. The parties confirmed that there were no rental arrears at the time of this hearing.

The Landlord explained that on October 5, 2015 the fire alarm in the building went off and the residents were evacuated. During this time, neighbours of the Tenants noticed that there was smoke coming out of the Tenant's rental unit. As a result, the building manager entered the Tenant's rental unit and observed that there was smoke coming out of a pot that had been placed on the stove which was left on high and there was a unattended burning candle.

The building manager also noticed that and that the Tenant had an excessive amount of personal property that would have provided for a high fuel source in the event of a potential fire. As a result, the Tenant was served with a breach letter which was provided into evidence dated October 14, 2015. In addition, the building manager took a number of photographs which were also provided into evidence and show the smoke in the rental unit as well as the excessive amounts of personal belongings stored by the Tenant in the rental unit.

The Landlord also provided the breach letter into evidence which points out that on October 5, 2015 the fire alarm sounded and it was observed during the incident that the Tenant had a high fuel load comprising of excessive garbage, boxes and waste materials in the unit, as well as a smoking pot and a burning candle. The breach letter referred to the following sections of the tenancy agreement: section 17 which speaks to the Tenant's conduct in ensuring that neighbours are not disturbed, harassed or annoyed by the actions of the Tenant; section 24 refers to the Tenant's requirement to deal properly with garbage and waste management; and section 26 which states that the Tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit. The breach letter concludes by giving the Tenant ten days to rectify the breach and to contact the building manager with written confirmation that the issue has been resolved by October 26, 2015.

On October 31, 2015 the building manager conducted a routine monthly inspection of the rental unit and observed that while the Tenant had made some attempts to clean the rental unit it was still not in great shape.

On December 29, 2015 the building manager observed that the Tenant was storing property on her patio and served the Tenant with notice to conduct an inspection for the next day. On December 30, 2015 the building manager entered the rental unit and observed that there was a substantial amount of property that was still being stored by the Tenant in the rental unit. This included clothing and personal items stored in boxes stacking upon each other up to the ceiling. The Landlord provided photographic evidence to show this and submitted that the Tenant was a hoarder and that this material was a source of a high fuel load if it were to be ignited.

As a result, the Landlord personally served the Tenant with the Notice on December 31, 2015. The Notice was provided into evidence and shows a vacancy date of January 31, 2016. The Notice shows that the reasons for ending the tenancy are as follows:

- The Tenant has seriously jeopardised the health and safety or lawful right of another occupant or the Landlord;

- The Tenant has put the Landlord's property at significant risk; and
- The Tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so was given.

The building manager testified that he had taken the photographs that had been provided into evidence and confirmed the testimony provided by the Landlord.

The Tenant admitted that she must have left the pot on the stove and the candle burning in the rental unit. The Tenant explained that she had a visitor over and suggested that he may have drugged her as she passed out in her bedroom only to awake to the smell of smoke. The Tenant stated that this was her mistake.

The Tenant testified that the building manager had removed the smoke detector within the rental unit after the smoke alarm had gone off on October 5, 2015 in order to stop it going off and that it was only replaced after she made multiple requests to do so.

The Tenant explained that she collects clothing and belongings to give to several different charities, societies, and church organisations to assist the homeless and this is the reason why she had so many belongings in the rental unit. The Tenant testified that she was involved in a serious relationship with a male who no longer resides at the rental unit because he is incarcerated but she has had to store his personal belongings in the rental unit.

When the Tenant was asked why she stored all of this property in the rental unit, the Tenant stated that she has been asking for a storage locker for many months from the building manager but they failed to provide her with one that had a lock on it. However, the Tenant acknowledged that there was no requirement of the Landlord to provide her with a storage lock under the written tenancy agreement.

The Tenant submitted that she did not store any garbage or dirt in the rental unit and that it was clean and undamaged. The Tenant submitted that she is a target of the Landlord because she recently failed to sign a rent increase that was proposed to her by the Landlord.

The Landlord explained that the Tenant had been informed that if she wanted a storage locker there was a $20.00 per month fee for this which she had to pay before it was provided to her. However, the Tenant did have access to a storage locker opposite her rental unit but this did not have a lock on it. The Landlord testified that when the Tenant started to make the payment of the storage locker in January 2016, she was provided with a storage locker with a lock on it.

The Landlord also explained that on January 21, 2016, during an inspection of the rental unit, it was observed that the Tenant was making attempts to clear out her belongings. It was then observed in an inspection on February 24, 2016 that she had cleaned out the rental unit to a satisfactory standard.

The Tenant referred to multiple photographs she had provided showing that the rental unit had been cleaned and cleared of excessive personal belongings. The Tenant testified that she had paid for and received the lockable storage locker on January 21, 2015 at which point she was able to clear out the rental unit.

The Tenant's advocate also pointed out that they had a witness who could confirm that the rental unit had been cleaned in January 2016. However, as this was undisputed by the Landlord and confirmed as above, there was no requirement for the witness to testify to this fact. The Tenant also made reference to multiple character statements she had obtained submitting that the neighbours had no problem with her.

However, when the Landlord was asked whether she wanted to continue with the tenancy as the situation had been remedied at the time of this hearing, the Landlord insisted that the tenancy should still end as the Tenant had breached the Act and the tenancy agreement at the time the Notice was given and that she still wanted to pursue the Notice dated December 31, 2015.

The Tenant did not want to mutually agree to end the tenancy but submitted that there was no breach at the time the Notice was served to her. The Tenant explained that she had removed the personal property to the unlocked locker opposite her rental unit well before she was served the Notice and that the Landlord made no efforts to come and observe or record this before the Notice was issued.

The Landlord rebutted this and referred to the photographic evidence which was taken by the building manager on December 31, 2015, the same day the Tenant was given the Notice. The Landlord pointed out that this was clear evidence that the Tenant had not complied with the breach letter and that the breach was still in existence at the time the Notice was served to the Tenant.

Analysis

Having examined the Notice, I find that the content and the manner in which it was personally served to the Tenant, complied with the requirements of the Act and the date of vacancy detailed on the Notice is also correct.

When a Landlord issues a tenant with a Notice for the reasons documented above, the landlord must prove, on the balance of probabilities, that at least one of the reasons provided on Notice is sufficient grounds to end the tenancy.

Firstly, I find that when the Tenant left the pot on the stove which caused the smoke alarm to go off in the building and left an unattended candle burning, this put the Landlord's property at significant risk and jeopardised the health and safety of other building residents. A Tenant bears a certain level of responsibility towards a rental unit to ensure that they are in a fit state to monitor items being left on a stove or a burning candle. In this case, I accept the Tenant failed to exercise due diligence and responsibility for these two items.

Secondly, I find that the Landlord's photographic evidence which was taken after the smoke alarm event in October 2015 clearly shows that the amount of personal property the Tenant kept in the rental unit went above and beyond that of what would be considered an appropriate amount of storage in such a rental unit. Section 32(2) of the Act and the tenancy agreement in this case informed the Tenant that she must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit. While I accept that the rental unit was not dirty or unsanitary, I find that this amount of storage of property would likely have caused significant risk to the Landlord's property, for example in the case of a fire which would have endangered the lives of other residents. This finding is also consistent with the Tenant's evidence that she collects and stores clothing and personal property to then pass onto other organisations. While I recognise that this is a noble act by the Tenant, I find that this activity put the Landlord's property at significant risk.

Thirdly, I find that after the smoke alarm incident, the Landlord had provided the Tenant with a breach letter. This letter clearly identified the issue and sections of the tenancy agreement the Tenant had breached. The Tenant would then have had an opportunity to rectify the issue within the time limit given by the Landlord on the letter. However, I find the evidence before me suggests that the Tenant did not remedy the issue. Therefore, I find that the tenant failed to correct a breach of the tenancy agreement after written notice to do so was given to her.

The Tenant argued that the issue was remedied before the Notice was given. However, I find the Landlord's photographic evidence is a preponderance of evidence that convinces me the Tenant was still keeping an excessive amount of personal property at the time the Notice was given, even though she had access to a storage locker that could not be locked. This finding is further supported by the fact that there was no requirement for the Landlord to provide the Tenant with a storage locker under the

tenancy agreement. Therefore, the Tenant would have been required to pay for a storage locker at the start of the tenancy if she had an excessive amount of belongings or she engaged in activities that meant she accumulated property. At the very least, the Tenant would have been required to pay for and obtain a storage locker after she was served the breach letter in order to comply with it, rather than paying for it in January 2016 as the evidence suggests.

Furthermore, I note that in the breach letter of October 14, 2015 the Landlord asked the Tenant to confirm that she had complied and remedied the issues by October 26, 2015. However, I find that the Tenant bore a responsibility to gather evidence of her rental unit and present this to the Landlord that she had complied with the breach letter. There is insufficient evidence before me that the Tenant complied with this instruction or provided sufficient evidence for this hearing that by the time the Notice was served to her she was compliant with it. Based on the foregoing, I find the Landlord has proved the Notice and it is upheld. The Tenant's Application to cancel the Notice is dismissed.

Section 55(1) of the Act states that if a tenant makes an Application to dispute a Notice the Arbitrator **must** grant an Order of Possession if the Notice complies with the Act and the tenant's Application is dismissed. As the effective date of the Notice has now passed, but the Tenant has paid rent for March 2016, the Order of Possession granted to the Landlord is effective for 1:00 p.m. on March 31, 2016. If the Tenant fails to vacate the rental unit on this date and time, the order may be enforced in the Supreme Court of British Columbia as an order of that court. Copies of the order are attached to the Landlord's copy of this decision for service on the Tenant.

Conclusion

For the reasons set out above, I dismiss the Tenant's Application to cancel the Notice without leave to re-apply. The Landlord is granted an Order of Possession which is effective for the end of March 2016. This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: March 03, 2016

Residential Tenancy Branch